

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
Improving Competitive Broadband Access	)	GN Docket No. 17-142
To Multiple Tenant Environments	)	
	)	
	)	
	)	

**REPLY COMMENTS OF GIGAMONSTER, LLC**

**I. INTRODUCTION**

This Notice of Inquiry seeks comment on “ways to facilitate greater consumer choice and enhance broadband deployment in multiple tenant environments (MTEs).”<sup>1</sup> All parties recognize that competition is the key to facilitating greater consumer choice and increasing incentives for broadband deployment in MTEs. However, there is disagreement among the commenters over how competition may best be enhanced, and in particular on the question of whether regulatory intervention at the local, state or Federal level is the best way to enhance competition among providers of broadband communications services to MTE residents.

GigaMonster, LLC (“GigaMonster”) formed in 2013 and based in Marietta, Georgia, is a private fiber-based gigabit Internet service provider, offering voice and Internet services to residential multi-tenant properties in direct competition with larger, well-funded entities. GigaMonster provides its services to hundreds of properties in approximately 30 metropolitan markets throughout the U.S., representing tens of thousands of units. GigaMonster’s services are highly competitive – the company offers Internet plans to its customers ranging from 30 Mbps to 1 Gbps, as well as domestic and international voice service—all at prices at or below those of the incumbent telco and cable providers. GigaMonster also

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<sup>1</sup> In these Comments, we use the term “MTE” as the Commission does in the NOI, referring to commercial or residential premises such as apartment buildings, condominium buildings, shopping malls or cooperatives that are occupied by multiple entities, including but not limited to “multiple dwelling-unit” or “MDU” buildings. *See* NOI, at para. 2, footnote 3.

serves affordable housing, assisted living, and student housing communities – delivering services that in many cases are not available, or not available at affordable prices from large incumbent carriers.

GigaMonster is an active member of the Multifamily Broadband Council (“MBC”) and fully supports MBC’s recently filed Petition seeking Preemption of Article 52 of the San Francisco Police Code in MB Docket No. 17-91. Many of the building access “reforms” outlined in this NOI proceeding are duplicated in San Francisco’s Article 52. For example, the NOI seeks comment on exclusive wiring arrangements under which ownership of in-building wiring is conveyed to the property owner, who then grants the right to use existing home run wiring without interruption by any third party, including any other provider that may be delivering services to customers within the MTE building. The primary innovation of Article 52 is to nullify by fiat this type of exclusive wiring arrangement. Because any qualified cable or broadband service provider, upon request by at least one MTE occupant, has the legal right under Article 52 to enter the MTE building, install equipment and connect its equipment to existing home run wiring that is owned by the building owner, no service provider may be contractually guaranteed uninterrupted use of that wiring.

GigaMonster believes that although the reform initiatives outlined in the NOI are characterized as proposals to enhance competition in MTEs, this characterization is extraordinarily naïve at best and disingenuous at worst, because were they actually implemented, there would be dramatically fewer competitive broadband providers operating in any MTE market where the proposed rules were legally binding.

Distilled to its essentials, proponents of MTE access reform argue that from a structural perspective, the MTE owner *always* functions as a gatekeeper who interferes with the relationship between service provider and MTE residents. Therefore, reform consists in radically limiting or even eliminating the MTE owner from the delivery-of-service transaction altogether. According to this viewpoint, the sale of broadband services to MTE residents should be the same transaction by which residents of single-family homes purchase services, without the MTE owner being involved at all.

But it is not accurate to simply assume that the MTE owner *always* functions as a gatekeeper, and that the *only* function of the access deal negotiated by and between the service provider and the property owner is to prevent MTE residents from having a choice among providers. In fact, access agreements serve a variety of purposes other than excluding other service providers from the MTE building – including specifying the kind of infrastructure to be deployed, allocating its costs, management, maintenance and upgrading of the in-building network, what customer service standards are to apply, and so on. Negotiated agreements between building owners and service providers on these and related points are essential for the delivery of high-quality services to MTE residents at affordable prices. Only by means of negotiated access agreements are smaller service providers and MTE owners incentivized to invest in advanced broadband infrastructure, and the continuing viability of competitive service providers like GigaMonster – providers that collectively constitute the *only* competitive constraint on the monopolistic practices of entrenched cable and telco incumbents – depends on their ability to negotiate agreements with MTE owners.

As it is currently constituted, the market for broadband services in MTEs includes three interested parties: the MTE resident, the service provider, and the MTE owner. If the access deal between the MTE owner and the service provider is eliminated from the service-delivery equation, the only party to benefit will be the service provider – and even among service providers, *only* those with virtually unlimited budgets, namely, the large incumbent cable and telco carriers who collectively have a long history of suppressing competition in MTEs whenever consumer choice threatens their monopolistic business models.

The reason why this is true is not especially complicated. Installing a broadband network at an MTE building costs money and someone must pay for it. Smaller competitive broadband service providers like GigaMonster fund a MTE build out either by sharing the cost of infrastructure with the MTE owner, or by negotiating contractual rights that ensure the competitive provider's ability to recover its costs over time. In other words, competitive service providers require and depend on an access deal with the MTE owner.



The only service providers that do not need or desire an access agreement with the building owner are those with very deep pockets, namely the large monolithic incumbents, because only those service providers can do without third-party financing of in-building network construction. Consequently, a regulatory scheme that eliminates the deal between the MTE owner and the service provider would *in effect* purge the MTE market of smaller service providers – the same providers that as a matter of fact constitute *only* competitive pressure on vertically integrated conglomerates that combine last mile connectivity with proprietary online content, subsidizing the former by means of the latter, and have every incentive to suppress consumer choice, innovation and competition in the MTE marketplace.

Commenters like INCOMPAS (whose members include some of the largest Internet companies in the world) envision a utopia in which every MTE resident has a free and unimpeded choice among every available broadband service provider without any interference from the MTE owner. But this utopian vision does not reflect the real world in which innovative smaller service providers like GigaMonster exist and compete, a world in which financing for in-building networks must be secured from creditors that demand proof of the provider's ability to generate revenue over time – proof that is offered to the creditor in the form of access agreements with MTE owners.

It is only by way of an access agreement with the MTE owner that GigaMonster is able to deliver very fast Internet connectivity to MTE residents at prices that are affordable, to guarantee strict and contractually enforceable service level agreements (SLAs) on behalf of residents, to commit to technology upgrades over the life of the contract, thus ensuring that MTE residents receive services equivalent or superior to those sold to residents of single-family homes, to build integrated on-site networks that connect a broad array of consumer and building devices, to offer high-quality bulked services, tailored to the specific MTE population's needs, at a small fraction of the price that a single-family home resident would pay for the same services, and so on. If mandatory access laws are enacted at the Federal level as contemplated in the NOI, competitive providers and MTE owners will be deprived of the ability to negotiate agreements that commit the service provider to these and other guarantees that

inure to the benefit of MTE residents. MTE markets will be divvied up by and among a small number of huge monolithic incumbents who will cherry-pick the most lucrative multi-tenant buildings in any given area while leaving the rest underserved or not served at all.

If the Commission really wants to see what the MTE world will be like if the access reforms contemplated in the NOI are actually implemented, it need only compare an access agreement negotiated between a competitive service provider like GigaMonster and a MTE owner, with a subscription agreement between a large incumbent like Google Fiber and an individual subscriber. The latter is *not* negotiated. On the contrary, it is a contract of adhesion between a vertically integrated conglomerate with world-wide scope and bottomless resources on the one hand, and a relatively powerless individual on the other. If the INCOMPAS and other advocates of access reform in this proceeding get their way, negotiated building access agreements will cease to exist, competitive broadband providers will disappear, and consumers who happen to live in MTEs will be left entirely at the mercy of a small number of incumbent carriers with long histories of anti-competitive conduct and predatory tactics.

Respectfully submitted,

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